

**NO. SC 85948**

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**IN THE SUPREME COURT  
FOR THE STATE OF MISSOURI**

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**STATE OF MISSOURI,**

**Respondent,**

**vs.**

**MICHAEL HANCOCK,**

**Appellant.**

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**APPELLANT'S REPLY BRIEF**

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Appellant cites this Court to several opinions which sanction the use of nonlawyer judges. Appellant acknowledges those opinions and does not question the constitutionality of the utilization of such individuals so long as appropriate review before a lawyer judge is provided. In such situation, the defendant can exercise his right of appellate review before a lawyer judge. Similarly he may elect to forego such review if he has confidence in the nonlawyer judge's determination.

The cynosure of Appellant's challenge is not that nonlawyer judges are deficient in their training or capacities. Rather, the challenge is to the ramifications which flow solely from the status of the judge. This individual is wholly disassociated with the factual allegations giving rise to the offense, yet he is a determinative factor as to the enhanceability of a subsequent offense.

Consider the situation where a represented defendant appears before a nonlawyer judge pleading guilty to the allegation that he operated a motor vehicle while intoxicated. The nonlawyer judge accepts his plea in manner which equates a proceeding before a lawyer judge. The nonlawyer judge sentences him in accordance with the provisions of the jurisdiction's municipal code.

This defendant has openly admitted the allegation with the benefit of the assistance of counsel. Under Section 577.023.1(2) R.S.Mo. The plea of guilty in and of itself is sufficient for enhancement without the necessity of a finding of guilty. Yet, the judge's lack of formal legal training precludes utilization of the defendant's plea as a predicate for enhancement. In

such a scenario there are no rights or interests of the accused to protect for he has openly acknowledged his transgressions. He simply benefits by reason of this unequal treatment.

Had this same individual denied the allegations levied but been found guilty by the nonlawyer judge, his rights were still protected in that he had an absolute right to appeal the trial court's determination and have the matter reconsidered by a person formally trained in the law.

A defendant whose circumstances place him before a lawyer municipal judge cannot plead guilty to the allegation of driving while intoxicated without such admission providing the predicate for recidivistic sanction. Such unequal treatment is the basis of Appellant's challenge.

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**CERTIFICATE OF COMPLIANCE AND SERVICE**

**I hereby certify:**

- 1. That the attached brief (a) includes the information required by Rule 55.03 and (b) complies with the limitations contained in Supreme court Rule 84.06(b) and contains 563 words, excluding the cover, the signature block and this certification, as determined by WordPerfect 9.0 software; and**
- 2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and**
- 3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, on this 8th day of November, 2004, to:**

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